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Attorney for Debtor/Defendant Allen Beal

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF UTAH, CENTRAL DIVISION

In re:	:	
	:	Bankruptcy Case No.: 19-20276
ALLEN BEAL	:	Chapter 7
	:	
Debtor.	:	
	:	
STATE BANK OF SOUTHERN UTAH,	:	
a Utah banking corporation,	:	
	:	
Plaintiff,	:	Adversary Proceeding No.: 19-02043
	:	
v.	:	
	:	
ALLEN BEAL,	:	
	:	
Defendant/Debtor.	:	

DEFENDANT'S MOTION TO STRIKE

COMES NOW the Defendant, Allen Beal, by and through counsel, who hereby submits the following Motion to Strike, pursuant to Rule 12(f) of the Federal Rules of Civil Procedure and other applicable law. In support hereof, Defendant states and represents as follows:

PRECISE RELIEF REQUESTED:

On 5/13/19, Plaintiff filed a Verified Motion for Extension of Time for Filing Adversary Complaint (the "Motion"). Plaintiff appears to have filed its Motion in both the underlying bankruptcy case docket and in the adversary case docket. (Dkt #28 in Case #19-20276; Dkt #6 in Adv Case #19-02043). Included in the Motion are certain allegations of fact, which amount to improper hearsay (Facts #25, 27, and 30). Additionally, the Motion contains at least one allegation of fact that lacks appropriate foundation (Fact #30). As more particularly set forth below, Defendant moves the Court for an Order striking such improper allegations, and asks the Court not to consider the same in making its rulings in this case.

GOVERNING LAW:

Rule 12(f) of the Federal Rules of Civil Procedure applies in adversary proceedings (see Fed. R. Bankr. P. 7012(b)), and allows the Court to strike from a pleading any immaterial or impertinent matters contained therein, in response to a motion filed by an aggrieved party.

ARGUMENT

I. PLAINTIFF'S MOTION CONTAINS INADMISSIBLE EVIDENCE THAT SHOULD BE STRICKEN AND NOT CONSIDERED BY THE COURT

Defendant respectfully asks this Court to strike the following factual allegations found in the Plaintiff's Verified Motion for Extension of Time for Filing Adversary Complaint, to wit:

- Fact #25 contains inadmissible hearsay. Specifically, the first three paragraphs of Fact #25 contains statements from an out-of-court declarant. Those statements are hearsay and should be stricken and not considered by the Court.

- Fact #27 contains inadmissible hearsay. Once again, this statement of fact contains numerous allegations based on what Plaintiff's counsel was purportedly "told" by a representative of the Court's IP department, specifically the first three sentences in the paragraph beginning with "I discussed the matter with the Court's IP department and was told ..." These statements are all purported declarations from an out-of-court declarant and once again constitute inadmissible hearsay. They should all be stricken and not considered by the Court.

- Fact #30, second sentence, contains inadmissible hearsay. The reference to "information provided" by an IT employee is a reference to an out-of-court declaration that is hearsay. That sentence should be stricken and not considered by the Court. Additionally, the last sentence of Fact #30 contains hearsay and also lacks foundation. It should likewise be stricken and not considered by the Court.

CONCLUSION:

Based upon the foregoing, Defendant respectfully requests that the Court enter an Order striking the improper hearsay evidence and other evidence as noted above. Defendant requests such further and additional relief as the Court may deem to be just and proper.

DATED: 6/3/19

/s/ Will Morrison
MORRISON LAW OFFICE, INC.
Attorney for Defendant/Debtor

CERTIFICATE OF SERVICE

This certifies that on 6/3/19, I caused to be served, via the method of service set forth below, a true and correct copy of the foregoing Defendant's Motion to Strike, upon each of the following:

Steven W Call
Ray Quinney & Nebeker, PC
via ECF Notification

Office of US Trustee
via ECF Notification

Philip G Jones
Chapter 7 Trustee
via ECF Notification

DATED: 6/3/19

/s/ Will Morrison